

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

29822

FILE:

B-215453

DATE: November 21, 1984**MATTER OF:**

Sammy Garrison Construction Company, Inc.

DIGEST:

1. When standard "Additive and Deductive Items" clause is applicable to some items of an IFB, awardee may not be selected on basis of low aggregate price for all items when insufficient funds were available at bid opening to cover all items subject to the clause.
2. Allegation of unbalanced bid caused by transferring costs from item subject to cost limitation to another item is unproven when bidder's bid price for the first item is proximate to government cost estimate.

Sammy Garrison Construction Company, Inc. (Garrison), protests the award of a contract for conversion of warehouse space to offices under invitation for bids (IFB) No. F09650-84-B-0032 issued by the Department of the Air Force. The protester contends that its total bid for all aspects of the warehouse conversion was low and that it should have received an award of the contract. It also contends that the bid of the company which received an award was materially unbalanced and should have been rejected for that reason.

We deny the protest.

The solicitation required a base bid converting the warehouse space to offices (item 1) and a separate bid price for an additive item, furnishing and installing carpeting, tile and rubber base (item 2). Bids were also required for furnishing and installing telephone and power lines to the converted offices (item 3) and for repairing wood columns in the offices (item 4).

The IFB provided that items 1 and 2 were subject to a \$200,000 statutory cost limitation and that the low bidder would be determined as follows:

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"NOTE TO ALL PROSPECTIVE BIDDERS: Only one award will be made as a result of this solicitation.

"The low bidder for purpose of award will be determined in accordance with M-32 Additive or Deductive Items and L-100 Cost Limitation for line items 0001 and 0002. After that determination is made, the bid price for line items 0003 and 0004 will be added to determine the overall low bidder for purposes of award.

"Project WR 273-4 (Line Items 0001 and 0002) is subject to a \$200,000.00 statutory cost limitation."

Paragraph M-32 incorporated the "Additive or Deductive Items" (APR 1968) clause, which provides in part:

"The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item 1 plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. . . ."

The "Cost Limitation" (APR 1974) clause, incorporated in the contract through paragraph L-100, reads as follows:

"A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (ii) exceed the cost limitations unless such limitations have been waived by the Assistant Secretary of Defense (Research and Engineering) prior to award."

After bid opening, one bidder was permitted to withdraw its bid because of a mistake and two were found nonresponsive because their bids for item 1 exceeded \$200,000. The bids of the remaining four bidders were as follows:

| | <u>Item 1</u> <u>(Base Bid)</u> | <u>Item 2</u> <u>(Additive)</u> | <u>Item 3</u> | <u>Item 4</u> | <u>Total</u> |
|-------------------------|------------------------------------|------------------------------------|---------------|---------------|--------------|
| Mid South | \$170,000 | \$29,000 | \$106,704 | \$8,000 | \$313,704 |
| C.T. Bone | 200,000 | 80,000 | 30,000 | 5,000 | 315,000 |
| Garrison | 194,000 | 32,000 | 50,278 | 21,000 | 297,298 |
| Award Constr & Dev. Co. | 161,883 | 38,117 | 100,439 | 43,689 | 344,128 |

The Air Force determined that only Mid South's bid for items 1 and 2 together did not exceed \$199,000 which was the amount of funds available for those items. The agency then awarded a contract to Mid South for all four items.

Garrison claims that it was never told that the cost limitation for items 1 and 2 was \$199,000 and believes that the bidder with the lowest total bid should have received a contract award. The Air Force responds that Garrison's bid for the first two items exceeded both the \$200,000 statutory cost limitation and the \$199,000 fund limitation. The agency contends that under the procedures for selection of the low bidder described in the IFB, Garrison was ineligible for award.

There is no requirement that funding limitations be disclosed to bidders before bid opening. Contracting officers are only required to determine and record in the contract file the amount of funds available. Department of Defense Federal Acquisition Regulation Supplement, § 36.303(c)(70), 49 Fed. Reg. 11459 (1984) (to be codified at 48 C.F.R. § 236.303(c)(S-70)). One week prior to bid opening, \$199,000 was certified as being available for the conversion of warehouse space to office space on a Request for Purchase form (AF Form 9, MAR 77) in the contract file.

Under the IFB, only bidders which met restrictions applicable to the first two items were eligible for award based on the total bid prices for all four items.

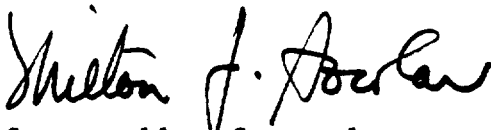
Garrison contends that the agency must award to the bidder submitting the lowest total bid price. However, application of the Additive and Deductive Items clause can result in the lowest total bid not receiving an award. See Utley-James, Inc., B-198406, June 16, 1980, 80-1 C.P.D. ¶ 417. The clause is intended to provide the government with the most advantageous contract, including as many features of the work as possible within the funds available. In this case, the Air Force properly eliminated the protester from consideration even though it submitted the lowest total bid price because its bid did not include as many acceptable items as the awardee's bid included.

In response to the protester's allegations that Mid South's bid was materially unbalanced in order to bring the firm's bids for items 1 and 2 within cost limitations, the Air Force points out that Mid South's bids for items 1 and 2 were close to the government's estimated prices. Therefore, it argues, Mid South cannot be said to have shifted costs for those items to item 3. The closeness of bidders' prices to the government estimate on items subject to a cost limitation is evidence of the reasonableness of the bids. ABC Siding & Remodeling, B-213390, July 10, 1984, 84-2 C.P.D. ¶ 32. This question, which looks to whether bids are mathematically unbalanced, is the first of a two-fold analysis applied to determine whether bids are materially unbalanced. A mathematical evaluation focuses upon whether each bid item carries its share of the cost of the work and of the contractor's profit/overhead or whether the bid is based upon nominal prices for some work and enhanced prices for other work. If found to be mathematically unbalanced, an assessment must be made of the significance of that bid. Unless there is a reasonable doubt that the award will not result in the lowest ultimate cost to the government or there is some substantial irregularity that will affect the competitive bidding system, the bid should not be considered materially unbalanced. Oswald Brothers Enterprises, Incorporated, B-180676, May 9, 1974, 74-1 C.P.D. ¶ 238.

Here, Mid South's bid on item 1 was about 5 percent less than the government estimate for item 1 (\$178,500) and about the same as the government estimate for item 2 (\$28,980). On the other hand, Mid South's bid for item 3 after an \$11,500 voluntary reduction (\$95,204) was about 112 percent higher than the government estimate (\$45,000) for item 3. Given the 5-percent difference between the government estimate and the bids on items 1 and 2 and the 112-percent difference between the government estimate and

the bid on item 3, Mid South does not appear to have transferred costs from items 1 and 2 to item 3 in order to meet the cost limitation. Moreover, the Air Force project architect who analyzed the bids for the Air Force attributed the bid for item 3 to the fact that the product was a relatively new and unfamiliar product. In the circumstances, we are unable to conclude that the Mid South bid was unbalanced.

In view of the foregoing, any question concerning Garrison's bid vis-a-vis the statutory cost limitation of \$200,000 is academic and will not be considered.

for 
Comptroller General
of the United States